

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-043-00497R

Parcel No. 370001810602500

Doug Reisz,
Appellant,

v.

Harrison County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on May 13, 2016. Doug Reisz was represented by Attorney Deborah Tharnish, Davis Brown Law Firm, Des Moines. Attorney Bret Ryan, Watson & Ryan, PLC, Council Bluffs, represented the Harrison County Board of Review.

Doug Reisz is the owner of a brick, one-story home located at 2940 Whitetail Drive, Logan. Built in 2009, it has 2664 square feet of above-grade finish; 2400 square-feet of average basement finish; an open porch; a deck and covered deck; and a three-car attached garage. There is also a 1200 square-foot outbuilding on the 15.01 acre site. (Ex. A).

The property's January 1, 2015, assessment was \$359,800, allocated as \$109,513 in land value, and \$250,287 in improvement value. (Exs. A & 2). Subsequently, there was an equalization order, which resulted in a new 2015 assessment of \$399,378, allocated as \$121,559 in land value, and \$277,819 in improvement value. (Ex. A). Reisz asserted the property was misclassified as residential under Iowa Code section 441.37(1)(a)(1)(c) and should be reclassified as agricultural real estate. The Board of Review denied the petition.

Reisz then appealed to PAAB.

Findings of Fact

Reisz testified about the history and use of the subject property. In 2009, Reisz and his wife purchased the subject's 15-acre lot for \$150,000, in a rural subdivision owned and developed by Ed Spencer, a nearby farmer and landowner. The subdivision has three plats with roughly forty sites ranging from 3- to 15-acres and is located approximately ten miles outside of Logan, Iowa. Typical Iowa farm ground growing corn and beans, with some alfalfa fields, surround the development.

Prior to its development, the subdivision and the subject site were used continually for agricultural activity and classified agricultural. After development, the individual sites were classified agricultural until they were improved; at which time each site was reclassified residential. Reisz testified that Spencer told him that row crop farming was allowed on the subject site. Reisz also testified that Spencer has row crops on certain lots in the subdivision.

The Reisz site is the largest site in the development. He purchased this site, in particular, because he intended to engage in farming activity. In 2009 after they built their residence, they began preparing the remainder of the site for farming activity, including incorporating their farming enterprise as Harris Grove Farms (HGF). Although he currently only owns 15-acres, Reisz explained he was interested in purchasing the adjoining 12-acre site to expand his farming activity; he hopes to do this in the next several years.

Currently, Reisz has approximately 8500 aronia berry plants on ten acres, an acre of fruit trees, 120 linear feet of grapes, and a 240 square-foot raspberry patch. He began planting the aronia berries in 2014, which has become the focus of his farming activity. Roughly 11 acres of the subject site is used for farming activity. (Ex. 10). Reisz stated that neither Spencer nor any neighbors have complained to him or asserted he cannot use the subject lot for his aronia berry operation.

Reisz testified that initially, HGF had considered growing grapes, however he determined it was too labor intensive with a lower profit margin. He researched the aronia berry and found that one of the largest aronia berry sellers in the country, Vaughn Pitz of Sawmill Hollow Farms (SMHF) was located in Missouri Valley, which is

approximately fifteen minutes from Reisz. After conversations with SMHF, Reisz transitioned his farming activity to aronia berries in 2014. In addition, HGF entered into a five-year contract with SMHF to provide all farmed berries to it. (Ex 11). SMHF will process (de-stem, separate, wash, dry, and box) all berries and hold them in cold storage until sold in the wholesale market. (Ex. 7).

Reisz explained that an aronia berry is similar to a blueberry and has some natural medical use because it is high in anti-oxidants; it is also known as a chokeberry. In preparing his field for production and future harvesting, he planted the aronia berries three feet apart, with the rows twelve feet apart, to allow the harvester to access and pick each row of berries. He is growing and harvesting the berries to be organically certified, which commands a higher commodity price. There are specific requirements to attain organic certification and it requires re-certification on a yearly basis. As part of the organic process, he brought in 25 truckloads of cow manure, which he disked into the crop area. He also installed a new well and a five-mile drip-line to the crop area. The drip-line runs along each row and drips every three feet to assist in watering the plants and promoting growth. He covered the crop area with clover and bluegrass as an organic weed suppressor and it also provides a natural moisture barrier. He also hand pulled hay bales to lie in between the new plants as moisture and weed barriers. Moreover, in accordance to his organic certification, Reisz explained that he purchased three 55-gallon drums of 10% distilled vinegar, which is an organic-certified herbicide, to use in controlling weeds. He further explained that even the vinegar had certain requirements to be considered sufficient for organic certification and he was required to submit the labels of the product he used to obtain and retain his certification.

Reisz testified that, as of the hearing, the berries were in their second year of growth. Typically, year three or four is when the plants are mature enough to harvest and return a profit. This is supported by his business plan (Ex. 7), which was developed to secure a microloan from the U.S. Department of Agriculture (USDA). (Exs. 5 & 6). The microloan application indicates that Reisz expects profitability from the operation beginning in 2016 with increasing profits moving forward.

In his business plan and testimony, Reisz explained the aronia berry projections after initial planting. The following chart is a summary of the projections.

| Year | Production Projections |
|------|------------------------|
| 1-2 | No Production |
| 3 | 3-5 lbs. p/bush |
| 4 | 6-10 lbs. p/bush |
| 5 | 12-15 lbs. p/bush |
| 6 | 18-22 lbs. p/bush |

He estimates the market projections for wholesale prices of aronia berries will be \$2-\$3 per pound. (Ex. 7). Assuming an average of twenty pounds per bush, with roughly 8500 bushes, the potential wholesale value of his mature crop would be between \$340,000 and \$510,000. Based on his research, testimony, and detailed business plan, we find Reisz to be highly knowledgeable regarding aronia berries, their uses, the wholesale market, and the commitment to growing and harvesting them in accordance with organic certification.

Harrison County Assessor Brenda Loftus testified for the Board of Review. Loftus was asked to compare the \$150,000 purchase price of the subject site in 2009, which is roughly \$10,000 per acre, to the average price of farm ground in Harrison County. She stated that the average price per acre of farm ground in 2015 was \$7500. Effectively, she was implying that the subject site was purchased for residential development and not for farming, which has a lower average price per acre.

Loftus testified she was familiar with the subject site and the subject development. She testified that once a site in the development is purchased and improved, it is reclassified from agricultural to residential. She also explained that as part of the development approval process, the zoning changed from A-1 (agricultural) to R-6 (residential). (Ex. C, Section 13.2). Within this zoning ordinance, she notes the principal use of the development, in this case, is for single-family development. (Ex. C, Section 13.41). Moreover, although there can be accessory uses and structures, they are subordinate to the principal use. (Ex. C, Section 13.6). Based on this, it is her opinion the subject property must have a residential classification because of its zoning.

In support of this, the Board of Review also notes the covenants of the subject's subdivision restrict some activity that may typically be associated with farming; such as restricting swine from the premises and placing restrictions on the type and location of fences. (Ex. D). In Loftus' experience, she has never seen restrictions placed on land used for farming activity or parcels that have agricultural classification.

The Board of Review also relied on current listings of other properties in the subject subdivision in making its decision to deny the reclassification of the subject. (Ex. E). The first listing submitted is 2931 Whitetail Drive, which is listed as residential property type, and having many mature fruit trees. (Ex E, pp 1-4). A second listing, Lot 24 Harris Grove Estates is adjacent, to the west of the Reisz parcel, and is the twelve-acre lot he was interested in purchasing for further expansion of his aronia berry production. It is listed as a residential site with an asking price of \$120,000; which Loftus notes is roughly double what typical farm ground sells for. (Ex. E, p. 5).

Loftus calculated that 8500 aronia berry plants would occupy roughly seven acres of the parcel. She believes her calculation is consistent with her observation. On cross-examination, she admitted her calculation did not account for turnarounds at the end of each row. Further, the FSA farm record indicates 10.71 acres of crop area. (Ex. 10). We note that Reisz's microloan application and contract with SMHF indicates his intent to plant 8 acres of aronia berries. (Exs. 5, 11).

Reisz questioned Loftus about training she received from the State regarding the classification of property. (Ex. 12). In that training, she acknowledged classification is not dependent on the zoning or location of a parcel. (Ex. 12, slide 17). However, she testified that zoning could provide a direction of the primary use of a property based on what it prohibits or allows. Moreover, she notes the sale and use of the surrounding sites are residential; combined, she believes these factors are pertinent to the decision to classify the subject as residential.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure

Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. Iowa Admin. r. 701-71.1(1).

Reisz asserts his property should be classified agricultural. By administrative rule 71.1(3) agricultural property, in pertinent part, is:

Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate

shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph “a” or “b” of this subrule. . . .

The parties stipulate that agricultural use is taking place on the subject property and the property is also used for residential purposes. Similarly, the Board of Review does not appear to dispute any agricultural use is being done in good faith. The parties mainly dispute whether the property is being operated for intended profit and whether the property is being primarily used for agricultural purposes.

We find a preponderance of the evidence shows the agricultural use is being done with an intent to profit. Despite the recorded losses from the agricultural operation, there was substantial evidence and testimony from Reisz about the potential profit to be made from the aronia berry crop when it matures. Reisz has a minimum five-year output contract with SMHF with options for renewal and, barring unexpected problems, the operation is nearing the point of becoming income generating. The microloan application suggests the aronia berry crop will first produce an income in 2016 and the income generated will grow moving forward. At which point, Reisz’s efforts will literally and figuratively bear fruit. He testified about his subjective intent to profit from this operation, and we find his intent objectively reasonable.

Because we find that Reisz is undertaking his aronia berry farming with an intent to profit, this case then turns on whether the property is primarily used for agricultural purposes. Reisz argues the agricultural use is the primary, current use of the property. He contends the covenants and zoning restrictions do not control the property’s assessment classification. The Board of Review argues that incidental, accessory agricultural use is permitted on the property, but zoning and covenants prevent the agricultural use from becoming the primary and principal use. The Board of Review asserts the property’s primary use must be residential.

This case reflects the difficulty in classifying a property with multiple uses. We recognize that covenants and zoning ordinances exist for the subject property; however Iowa law requires our focus be on the actual, *present use* of the subject property. Iowa Admin. r. 701-71.1(1). See *Sevde*, 434 N.W.2d at 880; *Polk Cnty. Bd. of Review v.*

Property Assessment Appeal Bd., 789 N.W.2d 765, 2010 WL 3155273 (Iowa App. Ct. Aug. 11, 2010); *Randall v. Board of Review for Ames*, 682 N.W.2d 83, 2004 WL 433997 (Iowa App. Ct. March 10, 2004). Whether or not the subject property completely conforms with zoning ordinances or covenants, PAAB's sole task is to determine its classification following the guidelines as set forth in the Rule. R. 701-71.1(1). The Rule clearly states: "Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees."

A preponderance of the evidence presented before PAAB indicates that the property is primarily and substantially used for raising the aronia berries. Although the parties disagreed on the exact amount of the subject site devoted to agricultural use, we find adequate support for our conclusion that the aronia berry operation constitutes at least eight acres and includes a majority of the subject's useable site. Reisz's aronia berry farm appears to be nearing income generation and profitability. He has devoted significant time, research, and efforts to establishing the operation and testified to his intent to operate profitably for years to come. Accordingly, based on the requirements of Rule 701-71.1 we find the property's primary use to be for agricultural purposes and classify it as such.

Order

IT IS THEREFORE ORDERED that the Harrison County Board of Review's action is modified. The assessment classification of Reisz's property located at 2940 Whitetail Drive, Logan, shall be changed from residential to agricultural. The Board of Review shall modify the assessment accordingly and revalue the property as necessary based on an agricultural classification within 15 days of the date of this order. The Board of Review shall submit a filing detailing this value with PAAB and the County Auditor.

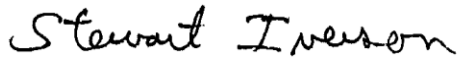
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of

PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 8th day of July, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

CC:

Deb Tharnish

Brett Ryan